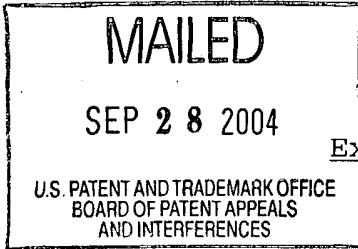


UNITED STATES PATENT AND TRADEMARK OFFICE



BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte AKIRA NISHIMURA, KIYOSHI HOMMA
and IKUO HORIBE

Application No. 09/079,468

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on September 9, 2004. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

On January 15, 2003, the examiner entered a Final rejection of claims 22-28, 40, 43 and 44. On May 15, 2003, appellants filed an amendment after final proposing to amend claims 22 and 43, and cancel claim 40. The examiner notified appellants in an Advisory Action mailed May 29, 2003 that the amendment filed May 15, 2003 would not be entered. However, the appellants' September 16, 2003 Appeal Brief does not include claim 40 as a claim at issue in the appeal, nor is claim 40 included in the Appendix to the Brief. Furthermore, the Examiner's Answer mailed

Application No. 09/079,468

January 30, 2004 rejects only claims 22-28 under 35 U.S.C. § 103(a) as being unpatentable over Kishi in view of Homma. Claims 40, 43 and 44 are not mentioned in the Examiner's Answer. The status of claims 40, 43 and 44 is not clear from the Appeal Brief and the Examiner's Answer. Clarification regarding the pendency of claim 40 is required. Clarification regarding the status of the § 103 rejection over claims 40, 43 and 44 is also required.

Finally, a review of the Appendix to the Brief reveals that claim 22 is not a correct copy according to the latest entered amendment filed November 5, 2002. Correction of claim 22 in the Appendix is required.

Accordingly, it is

ORDERED that the application is returned to the examiner for resolution of the following issues:

- (1) clarification of the pendency of claim 40;
- (2) clarification of the record as to the rejection status of claims 40, 43 and 44;
- (3) notification to appellants in writing as to the status of claims 40, 43 and 44;

Application No. 09/079,468

(4) notification to appellants to submit a corrected
Appendix to the Brief; and

(5) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

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RA04-0830